

1 A bill to be entitled

2 An act relating to liens on commercial real estate;  
3 creating ch. 714, F.S., the "Commercial Real Estate Lien  
4 Act"; providing definitions; specifying conditions under  
5 which a broker is entitled to a lien on commercial real  
6 estate; requiring a written instrument; requiring the  
7 recording of a notice of lien; providing for the contents  
8 and service of such notice; providing requirements with  
9 respect to installment and future commissions, leases,  
10 sales of property before commission is due, and written  
11 instruments with transferees; providing for enforcement of  
12 the lien by lawsuit; requiring written demand to initiate  
13 or file an answer to such lawsuit; providing conditions  
14 for satisfaction or release of the lien; providing for an  
15 alternative dispute resolution process; providing for  
16 assessment of costs, fees, and interest; declaring any  
17 waiver of lien rights void; providing priority of other  
18 recorded liens, mortgages, and encumbrances; providing for  
19 escrow of disputed amounts; amending s. 475.42, F.S.;  
20 providing that brokers may place liens on property as  
21 provided by law; providing an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25 Section 1. Chapter 714, Florida Statutes, consisting of  
26 sections 714.001, 714.003, 714.005, 714.007, and 714.009, is  
27 created to read:

28        714.001 Popular name.--This chapter may be referred to by  
 29 the popular name the "Commercial Real Estate Lien Act."

30        714.003 Definitions.--As used in this chapter, the term:

31        (1) "Broker" has the same meaning as in s. 475.01.

32        (2)(a) "Commercial real estate" means any real estate  
 33 other than:

34        1. Real estate containing one to four residential units;

35 or

36        2. Real estate on which no building or structure is  
 37 located and which is zoned for single-family residential use.

38        (b) "Commercial real estate" does not include single-  
 39 family residential units such as condominiums, townhouses, or  
 40 homes in a subdivision when sold, leased, or otherwise conveyed  
 41 on a unit-by-unit basis, even though these units may be a part  
 42 of a larger building or parcel or real estate containing more  
 43 than four residential units.

44        (3) "Commission" means any compensation or consideration  
 45 that may be due a broker licensed in this state for services  
 46 performed within the scope of the broker's license.

47        (4) "Future commission" means any additional commission  
 48 that may be due a broker as a result of future actions,  
 49 including, but not limited to, the exercise of an option to  
 50 expand the leased premises, to renew or extend a lease, or to  
 51 purchase the property.

52        (5) "Real estate" has the same meaning as in s. 475.01.

53        (6) "Transferee" means a person purchasing or otherwise  
 54 receiving any interest in commercial real estate, except a  
 55 sublessee or assignee of a lease.

56           (7) "Transferor" means the person selling or otherwise  
 57 conveying any interest in commercial real estate, except a  
 58 sublessor or assignor of a lease.

59           714.005 Broker's lien.--

60           (1) WRITTEN INSTRUMENT.--A broker shall have a lien upon  
 61 commercial real estate or any interest in that commercial real  
 62 estate which is the subject of a purchase, lease, or other  
 63 conveyance to a buyer or tenant of an interest in the commercial  
 64 real estate, in the amount that the broker is due for licensed  
 65 services, including, but not limited to, brokerage fees,  
 66 consulting fees, and management fees, under a valid and  
 67 enforceable written instrument signed by a transferor or the  
 68 transferor's duly authorized agent or by a prospective  
 69 transferee or the transferee's duly authorized agent. The lien  
 70 shall be available to the broker named in the signed instrument,  
 71 and not to any employee or independent contractor of the broker.

72           (2) ENTITLEMENT OF BROKER TO LIEN.--

73           (a) A lien under this chapter shall attach to the  
 74 commercial real estate or any interest in the commercial real  
 75 estate if the broker:

76           1. Is entitled to a fee or commission under a written  
 77 instrument signed in accordance with subsection (1); and

78           2. Except as otherwise provided in subsections (4)-(7),  
 79 records a notice of lien in the office of the clerk of the  
 80 circuit court of the county in which the property is located  
 81 prior to the actual conveyance or transfer of the commercial  
 82 real estate against which the broker is claiming the lien.

83        (b) The lien shall attach as of the date of the recording  
 84 of the notice of lien and shall not relate back to the date of  
 85 the written instrument.

86        (c) A broker shall not have the right under this chapter  
 87 to a lien for commission or other compensation owed to that  
 88 broker pursuant to a sublease or assignment of lease. The  
 89 provisions of this paragraph do not limit or otherwise affect  
 90 the claims or defenses a broker or any other party may have on  
 91 any other basis, in law or in equity.

92        (3) CONTENTS OF NOTICE OF LIEN.--A notice of lien shall  
 93 state the name of the claimant, the name of the owner of record  
 94 of the commercial real estate, a description of the property  
 95 upon which the lien is being claimed, the amount for which the  
 96 lien is claimed, and the real estate license number of the  
 97 broker. The notice of lien shall recite that the information  
 98 contained in the notice is true and accurate to the knowledge of  
 99 the signator. The notice of lien must be signed by the broker or  
 100 a person authorized to sign on behalf of the broker and must be  
 101 notarized.

102        (4) COMMISSION DUE IN INSTALLMENTS.--Except as otherwise  
 103 provided in subsections (5)-(7), when payment to a broker is due  
 104 in installments, a portion of which is due only after the  
 105 conveyance or transfer of the commercial real estate, any notice  
 106 of lien for those payments due after the conveyance or transfer  
 107 may be recorded at any time subsequent to the conveyance or  
 108 transfer of the commercial real estate but not later than 90  
 109 days after the date the payment is due. A notice of lien  
 110 recorded prior to conveyance or transfer of the commercial real

111 estate claiming all moneys due under an installment payment  
112 agreement or for future commissions as described in subsection  
113 (6) shall be valid and enforceable only to the extent it  
114 pertains to payments due from the transferee to the transferor  
115 after conveyance or transfer. As payments or partial payments of  
116 commission are received, a broker shall provide partial releases  
117 therefor, thereby reducing the amount due the broker under the  
118 broker's notice of lien.

119 (5) LEASE OF COMMERCIAL REAL ESTATE.--In the case of a  
120 lease, a notice of lien must be recorded no later than 90 days  
121 after the transferee takes possession of the leased premises.  
122 However, if a transferor personally serves written notice of the  
123 intended execution of the lease on a broker entitled to claim a  
124 lien, at least 10 days prior to the date of the intended  
125 execution of the lease, a notice of lien must be recorded before  
126 the date indicated in such notice for the execution of the  
127 lease. The lien shall attach as of the date of the recording of  
128 the notice of lien and shall not relate back to the date of the  
129 written instrument.

130 (6) FUTURE COMMISSION.--If a broker may be due future  
131 commissions pursuant to a written instrument signed by the then  
132 transferor or transferee, the broker may record a notice of lien  
133 at any time after execution of the lease or other written  
134 instrument which contains such option or options, but may not  
135 record the notice of lien later than 90 days after the event or  
136 occurrence on which the claimed future commission occurs.  
137 Notwithstanding subsection (10), an action to enforce a lien  
138 under this subsection must be commenced within 2 years after the

139 | occurrence or transaction on which the future commission is  
 140 | claimed.

141 | (7) REAL ESTATE SOLD BEFORE COMMISSION DUE.--In the event  
 142 | that the commercial real estate is sold or otherwise conveyed  
 143 | prior to the date on which either a future commission or an  
 144 | unpaid installment of a commission is due, if the broker has  
 145 | recorded a valid notice of lien prior to the sale or other  
 146 | conveyance of the real estate, then the purchaser or transferee  
 147 | shall be deemed to have notice of and shall take title to the  
 148 | real estate subject to the lien. However, if a broker claiming a  
 149 | future commission fails to record a notice of lien for future  
 150 | commission prior to the recording of a deed conveying legal  
 151 | title to the real estate to the transferee, then such broker may  
 152 | not claim a lien on the real estate. The provisions of this  
 153 | subsection do not limit or otherwise affect claims or defenses a  
 154 | broker or any other party may have on any other basis, in law or  
 155 | in equity.

156 | (8) WRITTEN INSTRUMENT WITH TRANSFEREE.--If a transferee  
 157 | has executed a written instrument in accordance with subsection  
 158 | (1), then a lien shall attach to the transferee's interest upon  
 159 | the transferee purchasing or otherwise accepting conveyance or  
 160 | transfer of the commercial real estate and the recording of a  
 161 | notice of lien by the broker in the office of the clerk of the  
 162 | circuit court of the county in which the property is located,  
 163 | within 90 days after the purchase or other conveyance or  
 164 | transfer to the transferee. The lien shall attach as of the date  
 165 | of the recording of the notice of lien and shall not relate back  
 166 | to the date of the written instrument.

167        (9) SERVICE OF NOTICE OF LIEN.--A broker shall, within 10  
168 days after recording a notice of lien, personally deliver or  
169 mail, by registered or certified mail, a copy of the notice of  
170 lien to the owner of record of the commercial real estate or the  
171 duly authorized agent of the owner of record at the address of  
172 the owner of record as stated in the written instrument on which  
173 the claim for lien is based or, if no such address is given, to  
174 the address of the property on which the claim of lien is based.  
175 Mailing of the copy of the notice of lien is effective when  
176 deposited in the United States mail with postage prepaid. A  
177 broker's lien on commercial real estate shall be unenforceable  
178 if delivery or mailing of the copy of notice of lien does not  
179 occur within the time period and in the manner required by this  
180 subsection.

181        (10) LAWSUIT TO ENFORCE LIEN.--

182        (a) A broker may bring suit to enforce a lien on  
183 commercial real estate in the circuit court in the county in  
184 which the property is located by filing a complaint and sworn  
185 affidavit that the notice of lien has been recorded.

186        (b) A broker claiming a lien on commercial real estate  
187 shall, within 2 years after recording the notice of lien,  
188 commence proceedings by filing a complaint. Failure to commence  
189 proceedings within 2 years after recording the notice of lien  
190 shall extinguish the lien. No subsequent notice of lien may be  
191 given for the same claim, nor may that claim be asserted in any  
192 proceedings under this chapter.

193        (c) A broker claiming a lien on commercial real estate  
194 based upon an option or other right to purchase or lease shall,

195 within 2 years after the conveyance or transfer of the real  
196 estate under the exercise of the option to purchase or lease,  
197 commence proceedings by filing a complaint. Failure to commence  
198 proceedings within this time period shall extinguish the lien.  
199 No subsequent notice of lien may be given for the same claim,  
200 nor may that claim be asserted in any proceedings under this  
201 chapter.

202 (d) A complaint under this section shall contain a brief  
203 statement of the contract or instrument on which the lien is  
204 based as well as its effective date, a description of the  
205 services performed, the amount due and unpaid, a description of  
206 the property that is subject to the lien, and other facts  
207 necessary for a full understanding of the rights of the parties.  
208 The plaintiff shall make all interested parties of whose  
209 interest the plaintiff is notified or has knowledge defendants  
210 to the action and shall issue summons and provide service as in  
211 other civil actions filed in this state. When any defendant  
212 resides or has gone out of the state, or on inquiry cannot be  
213 found, or is concealed within the state so that process cannot  
214 be served on the defendant, the plaintiff shall cause a notice  
215 to be given to the defendant or cause a copy of the complaint to  
216 be served on the defendant in the manner and on the same  
217 conditions as in other civil actions filed in this state.  
218 Failure of the plaintiff to provide proper summons or notice to  
219 the defendant as required by this paragraph shall be grounds for  
220 judgment against the plaintiff and in favor of the defendant  
221 with prejudice. All liens claimed under this chapter shall be



222 foreclosed in the manner of foreclosing a mortgage under the  
 223 provisions of chapter 702.

224 (11) DEMAND TO INITIATE OR FILE ANSWER TO LAWSUIT.--Upon  
 225 written demand of the owner of record or a lienee of the  
 226 commercial real estate, or a duly authorized agent of the owner  
 227 or lienee, served on the broker claiming the lien to require  
 228 suit to be commenced to enforce the lien or an answer to be  
 229 filed in a pending suit to enforce the lien, the suit must be  
 230 commenced or the answer filed within 30 days thereafter or the  
 231 lien shall be extinguished. Service of such written demand may  
 232 be made by registered or certified mail, return receipt  
 233 requested, or by personal service.

234 (12) SATISFACTION OR RELEASE OF LIEN.--

235 (a) Whenever a notice of lien on commercial real estate  
 236 has been recorded with the clerk of the circuit court and the  
 237 claimed commission has been paid to a broker claiming a lien on  
 238 the property, or when there is a failure to initiate a suit to  
 239 enforce the lien within the time period provided by this  
 240 section, the broker shall acknowledge satisfaction or release of  
 241 the lien in writing, upon written demand of the owner of the  
 242 commercial real estate, within 5 days after payment of the  
 243 amount claimed or within 5 days after expiration of the time  
 244 period in which the complaint to initiate the lawsuit was to be  
 245 filed.

246 (b) Whenever a notice of lien on commercial real estate  
 247 has been recorded with the clerk of the circuit court and a  
 248 condition occurs that would preclude a broker from receiving  
 249 compensation under the terms of the written agreement on which

250 | the lien is based, the broker shall provide to the owner of  
 251 | record, within 10 days following written demand by the owner of  
 252 | record, a written release or satisfaction of the lien.

253 | (13) ALTERNATIVE DISPUTE RESOLUTION.--If the broker and  
 254 | the party or parties from whom the commission is claimed agree  
 255 | to alternative dispute resolution, the claim shall be heard and  
 256 | resolved in the forum on which these parties have agreed. The  
 257 | court before which the action to enforce the lien is brought  
 258 | shall retain jurisdiction to enter judgment on the award or  
 259 | other result made or reached in alternative dispute resolution  
 260 | on all parties to the action to enforce the lien. The broker's  
 261 | notice of lien shall remain of record and the action to enforce  
 262 | the lien shall be stayed during the pendency of the alternative  
 263 | dispute resolution process.

264 | (14) ASSESSMENT OF COSTS, FEES, AND INTEREST.--The cost of  
 265 | proceedings brought under this section, including reasonable  
 266 | attorney's fees, costs, and prejudgment interest due to the  
 267 | prevailing party, shall be borne by the nonprevailing party or  
 268 | parties. When more than one party is responsible for costs,  
 269 | fees, and prejudgment interest, the costs, fees, and prejudgment  
 270 | interest shall be equitably apportioned by the court or  
 271 | alternative dispute resolution tribunal among the responsible  
 272 | parties.

273 | (15) WAIVER OF LIEN RIGHTS VOID.--Except for a  
 274 | satisfaction or release of lien provided in consideration of  
 275 | payment of the fee or commission claimed by a broker or other  
 276 | consideration acceptable to the broker or pursuant to subsection  
 277 | (12), any waiver of a broker's right to a lien on commercial

278 real estate under this section and any other waiver or release  
279 of such a lien is void.

280 714.007 Priority of other recorded liens, mortgages, and  
281 encumbrances.--Valid prior recorded liens, mortgages, and other  
282 encumbrances shall have priority over a broker's lien under this  
283 chapter. Such prior recorded liens, mortgages, and encumbrances  
284 shall include, without limitation:

285 (1) Any valid mechanic's lien claim that is recorded  
286 subsequent to the broker's notice of lien but which relates back  
287 to a date prior to the recording date of the broker's notice of  
288 lien.

289 (2) Prior recorded liens securing revolving credit and  
290 future advances of construction loans.

291 714.009 Escrow of disputed amounts.--Except as otherwise  
292 provided in this chapter, whenever a notice of lien on  
293 commercial real estate has been filed with the clerk of the  
294 circuit court that would prevent the closing of a transaction or  
295 conveyance, an escrow account shall be established from the  
296 proceeds from the transaction or conveyance, or other collateral  
297 or security, in an amount sufficient to release the lien. The  
298 requirement to establish an escrow account as provided in this  
299 section shall not be cause for any party to refuse to close the  
300 transaction or conveyance. The moneys or other collateral or  
301 security required to be held in escrow under this section shall  
302 be held until the rights of the parties to the escrowed moneys  
303 or other collateral or security have been determined by written  
304 agreement of the parties, by a court of law, or by any other  
305 process that may be agreed to by the parties for resolution of

306 | their dispute. Upon the escrow of funds or other collateral or  
 307 | security in the amount claimed in the lien, the lien and notice  
 308 | of lien shall be automatically dissolved. Upon release of the  
 309 | lien by the broker, the broker shall be deemed to have an  
 310 | equitable lien on the escrow funds or other collateral or  
 311 | security pending a resolution of the broker's claim, and the  
 312 | escrow shall not be released until a resolution is reached and  
 313 | agreed to by all necessary parties or ordered by a court. The  
 314 | parties are not required to follow the escrow procedure in this  
 315 | section if alternative procedures that would allow the  
 316 | transaction to close are available and are acceptable to the  
 317 | transferee in the transaction. If the proceeds from the  
 318 | transaction are insufficient to release all liens claimed  
 319 | against the commercial real estate, including the broker's lien,  
 320 | then the parties are not required to follow the escrow procedure  
 321 | in this section.

322 | Section 2. Paragraph (j) of subsection (1) of section  
 323 | 475.42, Florida Statutes, is amended to read:

324 | 475.42 Violations and penalties.--

325 | (1) VIOLATIONS.--

326 | (j) A broker or sales associate may not place, or cause to  
 327 | be placed, upon the public records of any county, any contract,  
 328 | assignment, deed, will, mortgage, affidavit, or other writing  
 329 | which purports to affect the title of, or encumber, any real  
 330 | property if the same is known to her or him to be false, void,  
 331 | or not authorized to be placed of record, or not executed in the  
 332 | form entitling it to be recorded, or the execution or recording  
 333 | whereof has not been authorized by the owner of the property,

334 | maliciously or for the purpose of collecting a commission, or to  
335 | coerce the payment of money to the broker or sales associate or  
336 | other person, or for any unlawful purpose. However, nothing in  
337 | this paragraph shall be construed to prohibit a broker or a  
338 | sales associate from recording a judgment rendered by a court of  
339 | this state or to prohibit a broker from placing a lien on a  
340 | property where expressly permitted by contractual agreement or  
341 | otherwise allowed by law.

342 |       Section 3. This act shall take effect July 1, 2004.